

## APPEAL NO. 010719

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 26, 2001. The hearing officer held that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the 11th quarter of eligibility, but that she did make a good faith search for employment during her 12th quarter and was entitled for that quarter.

The claimant has appealed and argues that she made a good faith search for employment commensurate with her ability to work. The respondent (carrier) recites evidence in favor of the decision. The 12th quarter was not appealed. An additional document filed by the claimant complaining of procedural matters was not timely filed as an appeal and was not considered.

### DECISION

We affirm the hearing officer's decision.

The hearing officer has fairly summarized the evidence in her decision and we will incorporate her summary here by reference. It is important to review the applicable administrative rule that governs analysis of a good faith search for employment. This is Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d) and (e) (Rule 130.102(d) and (e)). The hearing officer was without discretion to vary the terms of this rule.

Rule 130.102(d) and (e), applicable for the qualifying period of May 18 through August 16, 2000, states as follows:

- (d) Good Faith Effort. An injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee:
  - (1) has returned to work in a position which is relatively equal to the injured employee's ability to work;
  - (2) has been enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission during the qualifying period;
  - (3) has during the qualifying period been enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program provided by a private provider that is included in the Registry of Private Providers of Vocational Rehabilitation Services;

- (4) has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work; or
  - (5) has provided sufficient documentation as described in subsection (e) of this section to show that he or she has made a good faith effort to obtain employment.
- (e) Except as provided in subsections (d)(1), (2), (3), and (4) of this section, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her search efforts.

The hearing officer did not err in applying these rules and finding that the claimant was not entitled to SIBs for the 11th quarter because her search did not conform with either Rule 130.102(d) or (e). The hearing officer did not base her decision on the excluded carrier evidence but on the simple fact that the claimant did not search for work "in every week" of the 11th quarter qualifying period. While we note that the claimant testified that she had undergone some Texas Rehabilitation Commission (TRC) assessment testing during the qualifying period for the 11th quarter, there was no evidence presented that this was pursuant to any plan as described in Rule 130.101(8) nor was the claimant engaged in any training through TRC during this period. In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We affirm the decision and order.

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Michael B. McShane  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge